

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Troy Zwicker

v.

Civil No. 05-cv-233-JD

Warden, New Hampshire State Prison

O R D E R

Pro se petitioner Troy Zwicker has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in which he challenges the constitutionality of his state court conviction and confinement. The petition is before me for preliminary review. See Rule 4 of the Rules Governing § 2254 Proceedings ("Habeas Rules") (requiring initial review to determine whether petition is facially valid and may be served); see also United States District Court for the District of New Hampshire Local Rules 4.3(d) (authorizing the magistrate judge to preliminarily review *pro se* pleadings).

For the reasons stated in the report and recommendation issued simultaneously herewith, I recommend that the petition be served on the respondent but only as to three claims (Grounds Two, Three and Six). I have recommended dismissal of the

remaining claims (Grounds One, Four and Five).

Accordingly, the petition shall be served upon the Warden of the New Hampshire State Prison, who shall file an answer or other pleading in response to the allegations made therein. See id. (requiring reviewing judge to order a response to the petition). Service shall be completed by mailing to the New Hampshire Office of the Attorney General, which is the prison's attorney, by certified mail, return receipt requested, copies of this order, the report and recommendation and the habeas corpus petition and supporting document (document no. 1). Respondent shall answer or otherwise plead within thirty (30) days of the date of this order. The answer shall comply with the requirements of Section 2254 Rule 5 (setting forth contents of the answer).

Upon receipt of the response, the court will determine whether a hearing is warranted. See Section 2254 Rule 8 (providing circumstances under which a hearing is appropriate).

Petitioner is referred to Fed. R. Civ. P. 5, which requires that every pleading, written motion, notice, and similar paper, after the petition, shall be served on all parties. Such service

is to be made by mailing the material to the parties' attorneys.

SO ORDERED.

James R. Muirhead
United States Magistrate Judge

Date: August 4, 2005

cc: Troy Zwicker, *pro se*